

JUDGE PATTERSON

07 CV 3371

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ES&G TRADING, INC.,

Plaintiff,

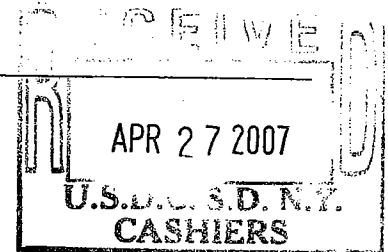
Case No. \_\_\_\_\_

v.

SUN CAPITAL, INC.,

Defendant.  
-----X

ECF CASE  
07 CV 3371 (RPP)



**NOTICE OF REMOVAL**

Defendant, Sun Capital, Inc. (hereinafter "Sun Capital"), by and through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1448, and Local Rule 81.1, hereby gives notice of its removal of this action from the Supreme Court of the State of New York in and for the County of New York (hereinafter "New York Supreme Court") to the United States District Court for the Southern District of New York. The removal of this case is based upon the following grounds:

On or about March 13, 2007, Plaintiff, ES&G Trading, Inc. (hereinafter "ES&G"), initiated an action that is pending in the New York Supreme Court. The case is styled *ES&G Trading, Inc. v. Sun Capital, Inc.* and is designated Case No. 07-103506.

**1. Defendant's Receipt of Complaint**

As of this date the Defendant has not been served with the Complaint in this action however, the Defendant first received a copy of the Complaint on April 5, 2007 after it received information about the lawsuit through receipt of documentation from a subpoena to another party. Upon receiving this information Sun Capital took action to obtain a copy of the Complaint from the Court file.

**2. Nature of Action in Plaintiff's Complaint**

Plaintiff's Complaint attempts to assert a claim for declaratory judgment determining that Plaintiff, ES&G is not a successor in interest to a company called East West Trading, Inc., a company with whom Sun Capital had a factoring relationship. Plaintiff's Complaint further requests injunctive relief requesting the court to issue an Order directing Sun Capital to cease and desist its alleged interference with ES&G's receipt of payment from the customers of East West Trading, Inc. who ES&G now claims are its customers.

**3. Removal of State Court Action**

Under 28 U.S.C. § 1441(a) "any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant . . . to the district court of the United States for the district and division embracing the place where such action is pending."

As demonstrated below, this action is removable under 28 U.S.C. § 1441(a) in that the district court would have original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship). In addition, venue is proper in the Southern District of New York and this Notice of Removal is being filed in a timely manner.

**4. Diversity of Citizenship Jurisdiction**

Under 28 U.S.C. § 1332(a) "[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs, and is between (1) citizens of different state . . . ." At the time the Complaint was filed, and at the time this Notice of Removal is filed, Plaintiff ES&G is a New York corporation with its principal place of business in New York, New York. Accordingly, the Plaintiff is a citizen of the State of New York. At the time the Complaint was filed, and at the

time this Notice of Removal is filed, Defendant, Sun Capital is a Florida corporation with its principal place of business in Boca Raton, Florida and thus Defendant for purposes of removal of this action, is a citizen of the State of Florida. The corporate parties are “citizens of different States” for the purpose of 28 U.S.C. § 1332 (a), and the amount in controversy is \$399,646.00, an amount “that exceeds the sum or value of \$75,000.00, exclusive of interest and costs.” Thus, the requirements of 28 U.S.C. § 1332(a) are satisfied and the case is removable pursuant to 28 U.S.C. § 1441(a).

**5. Venue**

This action was initially brought in the New York Supreme Court. The Southern District of New York is the judicial district embracing the place where the state court action was brought, and is therefore pending in the proper district court, to which this case should be removed. *See* 28 U.S.C. § 112 (b) and §§ 1441(a) and 1446(a).

**6. Timeliness of Notice of Removal**

Pursuant to 28 U.S.C. § 1446(b), this removal is timely because 30 days have not elapsed since Sun Capital received Plaintiff’s Complaint.

**7. State Court Proceedings**

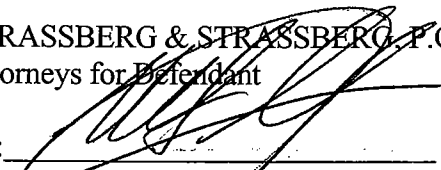
Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81.1 of the Southern District of New York, Sun Capital is simultaneously filing with this Notice copies of all process, pleadings and order existing on file in the New York Supreme Court in this removed action. Further, pursuant to 28 U.S.C. § 1446(d), Sun Capital is filing a true and correct copy of this Notice of Removal with the Clerk of the New York Supreme Court. A copy of the Notice of Filing Notice of Removal is attached as Exhibit “1.”

WHEREFORE, Defendant, Sun Capital respectfully gives notice of the removal of this action from the New York Supreme Court to the United States District Court for the Southern District of New York.

Dated: New York, New York  
April 26, 2007

Respectfully submitted,

STRASSBERG & STRASSBERG, P.C.  
Attorneys for Defendant

By:   
Robert Strassberg (RS-9628)  
57 West 38<sup>th</sup> Street 8<sup>th</sup> Floor  
New York, New York 10018  
(212) 736-9500

TO: LAWRENCE F. MORRISON, ESQ.  
Attorney for Plaintiff  
220 East 72<sup>nd</sup> Street  
New York, New York 10021  
(212) 861-1224

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
E S & G TRADING, INC  
Plaintiff,

**SUMMONS**  
Plaintiff designates  
New York County as the  
Place of Trial

-against-

SUN CAPITAL, INC.  
Defendant.

The basis of venue is 07103506  
Plaintiffs' address

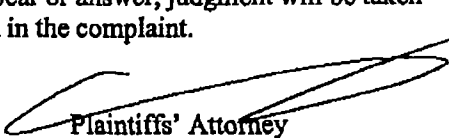
Plaintiff resides at  
1431 BROADWAY 9<sup>TH</sup> FLOOR  
New York, New York 10018

-----X  
TO THE ABOVE NAMED DEFENDANT:

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with a summons, to serve a notice of appearance on Plaintiffs attorneys within twenty days after service of this summons, exclusive of the day of service, where service is made upon you personally within the state, or within 30 days after completion of service, where service is made in any other matter. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Defendant's address:  
Sun Capital Group  
999 Yamato Road, 3<sup>rd</sup> Fl  
Boca Raton, Fl 334131

Dated: New York, New York  
MARCH 13, 2007

  
Plaintiffs' Attorney  
Lawrence Morrison, Esq.  
220 EAST 72<sup>ND</sup> STREET  
NEW YORK, NY  
(212)861-1224

**FILED**  
MAR 14 2007  
NEW YORK  
COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK  
COURT OF NEW YORK

-----X

E S & G TRADING, INC

Plaintiff

VERIFIED  
COMPLAINT

Against

SUN CAPITAL, INC.

Defendant.

-----X

Plaintiff complaining of defendant alleges:

1. Plaintiff is, and at all times hereinafter mentioned has been, a resident of New York County, New York.
2. Upon information and belief, defendant is, a corporation incorporated in the State of Florida.
3. Plaintiff is a wholesaler of women's and child clothing maintaining an office at 1431 Broadway, New York, NY 10018.
4. Defendant has contacted customers of Plaintiff and directed them not to make payments to Plaintiff because they claim Plaintiff is a successor in interest to a corporation named East West Trading Inc.,
5. The Plaintiff respectfully submits that it is not a successor in interest to East West Trading, Inc. and requires a court Order directing Defendant to cease and desist interfering with its sales.

6. The Plaintiff requires a declaratory judgment determining that it is not a successor in interest to East West Trading and directing defendant to cease interfering with the payment from its vendors.

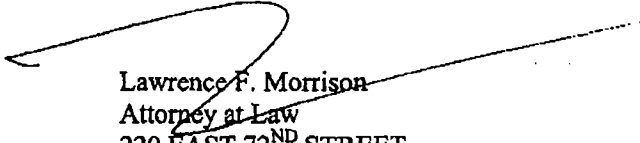
7. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff requests the court to declare the legal rights, relations, and duties of the parties with respect to the following matters:

a) That the Plaintiff is not a successor in interest to East West Trading, Inc and that Defendant should cease interfering with its sales.

b) Plaintiff further requests such other and further relief and declarations of the rights and legal relations of the parties to this action as may be necessary and proper.

Dated: New York, New York  
March 13, 2007




Lawrence F. Morrison  
Attorney at Law  
220 EAST 72<sup>ND</sup> STREET  
NEW YORK, NY 10021  
212-861-1224

VERIFICATION

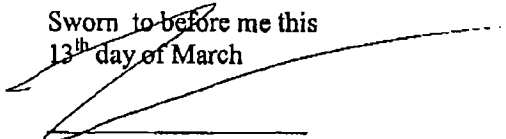
STATE OF NEW YORK     )  
                                      )SS:  
COUNTY OF NEW YORK    )

Evan Salton, being duly sworn deposes

Deponent is the President of Plaintiff corporation in the within action; he has read the foregoing complaint and know the contents thereof; the same is true to deponents own knowledge except as to matters therein alleged on information and belief; and as to those matters deponent believes them to be true.

  
\_\_\_\_\_  
Evan Salton

Sworn to before me this  
13<sup>th</sup> day of March

  
\_\_\_\_\_  
Lawrence Morrison  
Notary Public  
State of New York  
#02m06059654  
Commission expires 7/28/07



121

AT AN IAS term, part of the  
Supreme Court, held in and  
For the County of New York at the  
County Courthouse, 60 Centre Street  
New York, New York 10007  
On the day of March, 2007

PRESENT:

07103506

Hon:

Justice

-----X  
E S & G TRADING, INC.

Plaintiff,

-against-

SUN CAPITAL INC.

Defendant.  
-----X

ORDER TO SHOW  
CAUSE

Index Number

FILED  
COUNTY CLERK  
NEW YORK COUNTY  
MAR 14 2007  
Unsigned Order to  
Show Cause

UPON READING AND FILING the annexed emergency affidavit of Evan Salton dated March,  
13, and upon the summons and verified complaint

LET THE DEFENDANTS or their attorneys show cause at an IAS Term part of this court to  
be held at the County Courthouse, 60 Centre Street, Room , New York, New York on the  
Day of March, 2007 at 9:30 a.m. in the forenoon of that date or as soon thereafter as counsel can  
be heard why a declaratory judgment should not be had determining that Plaintiff is not a

successor in interest of East West Trading, Inc. and directing defendant to cease interfering with its sales together with such other and further relief as this court deems just and proper.

AND SUFFICIENT CAUSE HAVING BEEN ALLEGED LET service of a copy of this order and the papers upon which it is granted be served upon the Defendant via overnight mail on or before the Day of March, 2007 be deemed good and sufficient service.

ENTER:

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JUSTICE OF THE SUPREME COURT  
OF THE STATE OF NEW YORK

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

Index #

E S & G TRADING, INC

EMERGENCY  
AFFIDAVIT IN SUPPORT

-against-

SUN CAPITAL, INC.

Defendant.

-----X

STATE OF NEW YORK )

COUNTY OF NEW YORK )

Evan Salton being duly sworn deposes and says:

1. I am the President of the Plaintiff herein and make this affidavit in support of the annexed  
Order to Show Cause .

**ES & G TRADING INC NOT A SUCCESSOR IN  
INTEREST TO EAST WEST TRADING ,INC.**

2. The Defendant has been writing letters to our customers and factor saying that Plaintiff is  
a successor in interest to a company called East West Trading.

3. I am the President of Plaintiff. I was not a principal, officer or director of East West  
Trading. My 50 percent partner is Kristen Goldfarb who also was not a principal officer or  
director of East West Trading, Inc.

4. Annexed as Exhibit A are letter written to my customers directing them not to pay me and they aren't.
5. Annexed as Exhibit B is my website for my two brands Loca Loca and Pure.
6. Annexed as Exhibit C is the Dun and Bradstreet report which shows that I am not a successor in interest to East West Trading, Inc.

**DEFENDANTS INTERFERENCE WILL LEAVE ME UNABEL TO MEET MY  
PAYROLL THIS FRIDAY**

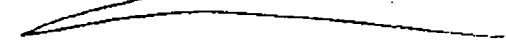
7. Plaintiff's interference with Plaintiffs business will leave me unable to meet my payroll this Friday. I require immediate court intervention to declare that E S & G Trading, Inc is not a successor in interest

8. I need an immediate court to determine the rights and relations of the parties.

No prior application ahs been made for the relief sought in this application.

  
Evan Salton

Sworn to before me this  
13<sup>th</sup> day of March

  
Lawrence Morrison  
Notary Public  
State of New York  
#02m06059654  
Commission expires 7/28/07

SUPREME COURT OF THE STATE OF NEW YORK  
COURT OF NEW YORK

-----X

ES & G TRADING, INC

Plaintiff

VERIFIED  
COMPLAINT

Against

SUN CAPITAL, INC.

Defendant.

-----X

Plaintiff complaining of defendant alleges:

1. Plaintiff is, and at all times hereinafter mentioned has been, a resident of New York County, New York.
2. Upon information and belief, defendant is, a corporation incorporated in the State of Florida.
3. Plaintiff is a wholesaler of women's and child clothing maintaining an office at 1431 Broadway, New York, NY 10018.
4. Defendant has contacted customers of Plaintiff and directed them not to make payments to Plaintiff because they claim Plaintiff is a successor in interest to a corporation named East West Trading Inc.,
5. The Plaintiff respectfully submits that it is not a successor in interest to East West Trading, Inc. and requires a court Order directing Defendant to cease and desist interfering with its sales.

6. The Plaintiff requires a declaratory judgment determining that it is not a successor in interest to East West Trading and directing defendant to cease interfering with the payment from its vendors.


7. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff requests the court to declare the legal rights, relations, and duties of the parties with respect to the following matters:

a) That the Plaintiff is not a successor in interest to East West Trading, Inc and that Defendant should cease interfering with its sales.

b) Plaintiff further requests such other and further relief and declarations of the rights and legal relations of the parties to this action as may be necessary and proper.

Dated: New York, New York  
March 13, 2007



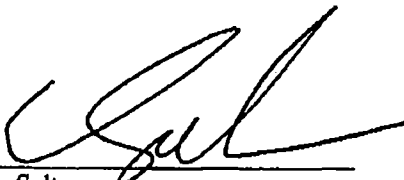
Lawrence F. Morrison  
Attorney at Law  
220 EAST 72<sup>ND</sup> STREET  
NEW YORK, NY 10021  
212-861-1224

VERIFICATION

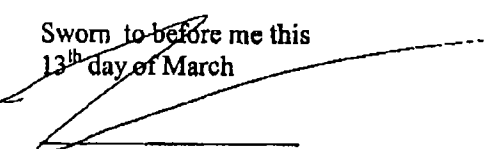
STATE OF NEW YORK     )  
                                  )SS:  
COUNTY OF NEW YORK    )

Evan Salton, being duly sworn deposes

Deponent is the President of Plaintiff corporation in the within action; he has read the foregoing complaint and know the contents thereof; the same is true to deponents own knowledge except as to matters therein alleged on information and belief; and as to those matters deponent believes them to be true.

  
\_\_\_\_\_  
Evan Salton

Sworn to before me this  
13<sup>th</sup> day of March

  
\_\_\_\_\_  
Lawrence Morrison  
Notary Public  
State of New York  
#02m06059654  
Commission expires 7/28/07

**EXHIBIT "A"**



PICK & ZABICKI LLP

ATTORNEYS AT LAW  
369 Lexington Avenue, 12<sup>th</sup> Floor  
New York, New York 10017

Douglas J. Pick  
Eric C. Zabicki

Telephone: (212) 695-6000  
Facsimile: (212) 695-6007  
e-mail: dpick@picklaw.net

February 21, 2007

Via Facsimile 727-822-8543

Mr. Ivan T. Baker, CFO  
United Capital Funding Corp.  
146 Second Street North, Suite 200  
St. Petersburg, Florida 33701

Re: ES&G Trading, Inc./East-West Trading, Inc./Sun Capital Inc.

Dear Mr. Baker:

Our office has recently been retained as counsel to ES&G Trading Inc. ("ES&G"). We have reviewed a copy of a letter, dated February 15, 2007, submitted to United Capital Funding Corp. ("United Capital") by Sun Capital Inc. ("Sun Capital"). This letter is submitted in response to the unsupported allegations made by Sun Capital to the effect that ES&G is a "successor entity" to East-West Trading, Inc. ("East-West").

The only officers of East-West are Lawrence Goldfarb and Russell Goldfarb, whereas the only officers of ES&G are Evan Salton (President) and Kristin Goldfarb (Vice-President). Suzanne Goldfarb is the sole shareholder of the stock of East-West. Evan Salton and Kristin Goldfarb each own 50% of the stock of ES&G. Although Suzanne Goldfarb is the daughter, and Kristin Goldfarb the daughter-in-law, of Lawrence Goldfarb, that relationship does not make the corporations affiliated or successor entities. As such, there are no officers, directors and/or shareholders in common between the two distinctive corporations. Additionally, although ES&G sublets space from East-West, East-West and ES&G maintain wholly separate operations. As such, there is no merit to Sun Capital's assertions that ES&G is a successor entity to East-West and Sun Capital has no valid claim to any monies collected by United Capital against ES&G's account.

We would appreciate if you could contact the undersigned with any questions or comments you may have with respect to this matter.

Very truly yours,

Douglas J. Pick

DJP/nr

PICK & ZABICKI LLP

ATTORNEYS AT LAW  
369 Lexington Avenue, 12<sup>th</sup> Floor  
New York, New York 10017

Douglas J. Pick  
Eric C. Zabicki

Telephone: (212) 695-6000  
Facsimile: (212) 695-6007  
e-mail: dpick@picklaw.net

February 21, 2007

Mr. Charles Anteby  
Tag Apparel  
1375 Broadway, Suite 1102  
New York, New York 10018

Tag Apparel  
15001 S. Figueroa Street  
Gardena, California 90248  
Attn: Accounts Payable Dept.

Re: ES&G Trading, Inc./East-West Trading, Inc./Sun Capital Inc.

Dear Mr. Anteby:

Our office has recently been retained as counsel to ES&G Trading Inc. ("ES&G"). We have reviewed a copy of a letter, dated February 16, 2007, submitted to Tag Apparel by Sun Capital Inc. ("Sun Capital"). This letter is submitted in response to the unsupported allegations made by Sun Capital to the effect that ES&G is a "successor entity" to East-West Trading, Inc. ("East-West").

The only officers of East-West are Lawrence Goldfarb and Russell Goldfarb, whereas the only officers of ES&G are Evan Salton (President) and Kristine Goldfarb (Vice-President). Suzanne Goldfarb is the sole shareholder of the stock of East-West. Evan Salton and Kristine Goldfarb each own 50% of the stock of ES&G. Although Suzanne Goldfarb is the daughter, and Kristine Goldfarb the daughter-in-law, of Lawrence Goldfarb, that relationship does not make the corporations affiliated or successor entities. As such, there are no officers, directors and/or shareholders in common between the two distinctive corporations. Additionally, although ES&G sublets space from East-West and East-West has performed some production work for ES&G, East-West and ES&G maintain wholly separate operations. As such, there is no merit to Sun Capital's assertions that ES&G is a successor entity to East-West and Sun Capital has no valid claim to any monies owed by Tag Apparel to ES&G.

We would appreciate if you could contact the undersigned with any questions or comments you may have with respect to this matter.

Very truly yours,

Douglas J. Pick

DJP/nr

FEB-16-2007 02:58PM FROM-

T-084 P 002/003 F-484



Fin Right Cash Flow Solutions™

**RE: In re: East-West Trading, Inc., Debtor**

February 16, 2007

Tag Apparel  
Accounts Payable Department  
15001 S Figueroa St.  
Gardena, CA 90248

VIA FAX: 212-575-0896

Aerospace Receivable  
Factoring and ManagementMedical Receivable  
Factoring, Billing and  
ManagementConstruction Receivable  
Factoring and Management

Equipment Leasing

Payable Order  
FactoringLetter of  
CreditInventory  
FinancingTitle  
Administration

Dear: Charles Anteby

As you may be aware, Sun Capital, Inc. ("Sun") had an active factoring relationship with a company identified as East-West Trading, Inc. ("East-West") due to the parties having entered into a Master Purchase and Sale Agreement ("Factoring Agreement") on March 18, 2003, which was amended by agreements dated January 11, 2005 and May 3, 2006). On June 13, 2006, East-West petitioned for Bankruptcy protection and on July 21, 2006 Sun was granted authority to factor post-petition all of East-West's invoices. East-West later sought to have the Chapter 11 case dismissed, which request was denied, but the case was converted to a Chapter 7 case. Sun has recently learned that one or more of the principals of East-West have formed a new company identified as ES&G Trading, Inc. d/b/a Loca Loca ("ES&G").

This letter shall serve to advise you that Sun has been informed that tag apparel has purchased goods and/or services from ES&G and that one or more accounts have been created. It is our belief at this time that due to, among other things, the conversion of East-West's bankruptcy case to a Chapter 7 and the facts surrounding the operation of East-West during that case, that ES&G is a successor entity to East-West. Moreover, pursuant to the express terms of the Factoring Agreement Sun was given a contractual right to extend its lien in the assets of East-West to the assets of ES&G as a successor entity, including your account(s).

We refer you to section 21(n) of the Factoring Agreement, which states as follows:

9200 Moore Road  
Boca Raton, FL 33437Telephone (561) 995-9615  
Fax (561) 994-1207

800-800-8000  
Toll Free (800) 800-8000  
FAX (800) 800-8000  
www.suncapital.com

FEB-16-2007 02:58PM FROM-

T-064 P.009/003 F-434

In the event Seller's principals, officers or directors form or participate, directly or indirectly, in the formation of a new entity, whether corporate, partnership, limited liability company or otherwise, similar to that of Seller during the term of this Agreement or if terminated, while any indebtedness is due SCI, such newly formed entity shall be deemed to have expressly assumed the obligations due SCI by Seller under this Agreement. Upon the formation of any such entity, SCI shall be deemed to have been granted an irrevocable power of attorney with authority to execute, on behalf of the newly formed successor business, a new UCC 1 or UCC 3 financial statement and have it filed with any appropriate UCC filing office. SCI shall be held harmless by Seller and its principals, officers and directors and be relieved of any liability arising out of the recording of any UCC financing statement or the resulting perfection of a lien in any of the successor entity's assets. In addition, SCI shall have the right to notify the successor entity's account debtors of SCI's lien rights, its right to collect all receivables, and to notify any new lender who has sought to procure a competing lien in such successor entity's assets.

Accordingly, Sun takes this opportunity to inform you that it is making a claim to the proceeds arising from any accounts created by ES&G and that you should carefully consider any actions you take that are inconsistent with this demand.

Should you have any questions relating to this issue, please do not hesitate to contact the undersigned.

Sincerely,



ROBERT DODEK  
Sr. Vice President  
800-880-1709

cc: East-West Trading, Inc.  
ES&G Trading, Inc. d/b/a Loca Loca



For Wright Cash Flow Solutions™

RE: In re: East-West Trading, Inc., Debtor

February 16, 2007

Tag Apparel  
Accounts Payable Department  
15001 S Figueroa St,  
Gardena, CA 90248

VIA FAX: 212-575-0896

Accounts Receivable  
Factoring and Management

Medical Receivable  
Factoring, Billing, and  
Management

Construction Receivable  
Factoring and Management

Equipment Leasing

Purchase Order  
Factoring

Letters of  
Credit

Inventory  
Financing

Joint  
Adaptation

Dear: Charles Anteby

As you may be aware, Sun Capital, Inc. ("Sun") had an active factoring relationship with a company identified as East-West Trading, Inc. ("East-West") due to the parties having entered into a Master Purchase and Sale Agreement ("Factoring Agreement") on March 18, 2003, which was amended by agreements dated January 11, 2005 and May 3, 2006). On June 13, 2006, East-West petitioned for Bankruptcy protection and on July 21, 2006 Sun was granted authority to factor post-petition all of East-West's invoices. East-West later sought to have the Chapter 11 case dismissed, which request was denied, but the case was converted to a Chapter 7 case. Sun has recently learned that one or more of the principals of East-West have formed a new company identified as ES&G Trading, Inc. d/b/a Loca Loca ("ES&G").

This letter shall serve to advise you that Sun has been informed that tag apparel has purchased goods and/or services from ES&G and that one or more accounts have been created. It is our belief at this time that due to, among other things, the conversion of East-West's bankruptcy case to a Chapter 7 and the facts surrounding the operation of East-West during that case, that ES&G is a successor entity to East-West. Moreover, pursuant to the express terms of the Factoring Agreement Sun was given a contractual right to extend its lien in the assets of East-West to the assets of ES&G as a successor entity, including your account(s).

We refer you to section 21(n) of the Factoring Agreement, which states as follows:

2250 Baltimore Road  
Baltimore, MD 21207

Telephone: (661) 995-9615  
Facsimile: (661) 995-1937

\*Call for Numbers  
Telephone: (800) 888-1709  
Facsimile: (800) 645-1937

www.suncapitalinc.com

In the event Seller's principals, officers or directors form or participate, directly or indirectly, in the formation of a new entity, whether corporate, partnership, limited liability company or otherwise, similar to that of Seller during the term of this Agreement or if terminated, while any indebtedness is due SCI, such newly formed entity shall be deemed to have expressly assumed the obligations due SCI by Seller under this Agreement. Upon the formation of any such entity, SCI shall be deemed to have been granted an irrevocable power of attorney with authority to execute, on behalf of the newly formed successor business, a new UCC 1 or UCC 3 financial statement and have it filed with any appropriate UCC filing office. SCI shall be held-harmless by Seller and its principals, officers and directors and be relieved of any liability arising out of the recording of any UCC financing statement or the resulting perfection of a lien in any of the successor entity's assets. In addition, SCI shall have the right to notify the successor entity's account debtors of SCI's lien rights, its right to collect all receivables, and to notify any new lender who has sought to procure a competing lien in such successor entity's assets.

Accordingly, Sun takes this opportunity to inform you that it is making a claim to the proceeds arising from any accounts created by ES&G and that you should carefully consider any actions you take that are inconsistent with this demand.

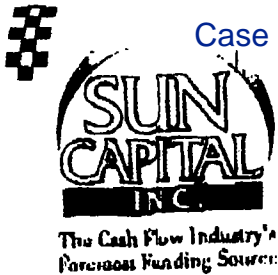
Should you have any questions relating to this issue, please do not hesitate to contact the undersigned.

Sincerely,



ROBERT DODEK  
Sr. Vice President  
800-880-1709

cc: East-West Trading, Inc.  
ES&G Trading, Inc. d/b/a Loca Loca



February 15, 2007

Mr. Ivan T. Baker  
Chief Financial Officer  
United Capital Funding Corp.  
146 Second Street North, Suite 200  
St. Petersburg, Florida 33701

**RE: In re: East-West Trading, Inc., Debtor**

Dear Mr. Baker:

As you may be aware, Sun Capital, Inc. ("Sun") had an active factoring relationship with a company identified as East-West Trading, Inc. ("East-West") due to the parties having entered into a Master Purchase and Sale Agreement ("Factoring Agreement") on March 18, 2003, which was amended by agreements dated January 11, 2005 and May 3, 2006). On June 13, 2006, East-West petitioned for Bankruptcy protection and we were granted authority to factor post-petition invoices on July 21, 2006,<sup>1</sup> during which East-West sought to have the Chapter 11 case dismissed. We have recently learned that one or more of the principals of East-West have formed a new company identified as ES&G Trading, Inc. d/b/a Loca Loca ("ES&G"). We also understand that this new company, ES&G, has entered into an agreement with United Capital Funding Corp. ("United Capital") to, *inter alia*, factor its accounts.

It is our belief at this time that due to, among other things, the conversion of East-West's bankruptcy case to a Chapter 7 and facts surrounding the operation of East-West during that case, that ES&G is a successor entity to East-West. Moreover, pursuant to the express terms of the Factoring Agreement we were given a contractual right to extend our lien in the assets of East-West to the assets of ES&G as a successor entity. Specifically section 21(n) of the Factoring Agreement states as follows:

In the event Seller's principals, officers or directors form or participate, directly or indirectly, in the formation of a new entity, whether corporate, partnership, limited liability company or otherwise, similar to that of Seller during the term of this Agreement or if terminated, while any indebtedness is due SCI, such newly

<sup>1</sup> Because East-West defaulted on its obligations, we have terminated the post-petition factoring documents and obtained stay relief pursuant to the terms thereof

formed entity shall be deemed to have expressly assumed the obligations due SCI by Seller under this Agreement. Upon the formation of any such entity, SCI shall be deemed to have been granted an irrevocable power of attorney with authority to execute, on behalf of the newly formed successor business, a new UCC 1 or UCC 3 financial statement and have it filed with any appropriate UCC filing office. SCI shall be held-harmless by Seller and its principals, officers and directors and be relieved of any liability arising out of the recording of any UCC financing statement or the resulting perfection of a lien in any of the successor entity's assets. In addition, SCI shall have the right to notify the successor entity's account debtors of SCI's lien rights, its right to collect all receivables, and to notify any new lender who has sought to procure a competing lien in such successor entity's assets.

It is our belief at this time that United Capital did factor a certain number of accounts, but that it will be able to fully collect those accounts. Based on the content of this letter and other facts and circumstances, we are hereby making a claim to any monies collected.

Should you have any questions or concerns about this please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Dodek', is positioned above the printed name.

ROBERT DODEK  
Senior Vice President  
Sun Capital,



FEB-16-2007 02:58PM FROM-

T-064 P 001/003 F-434



**The Cash Flow Industry's  
Foremost Funding Source**

**Sun Capital, Inc.  
999 Yamato Road, Third Floor  
Boca Raton, FL 33431  
Telephone: (800) 880-1709  
Facsimile: (800) 645-1942**

**# of Pages Including This Cover 3**

**Via Facsimile: 212-575-0896**

**To: Charles Anteby**  
**Dept:**  
**Company: Tag Apparel**  
**From: Robyn Redgate**  
**Date: 2/15/07**  
**Re: EAST WEST TRADING INC**  
**ES&G Trading**

**Please see attached revised letter and disregard the initial letter sent to you in this matter. Thank you for your help.**

**SUN CAPITAL CONFIDENTIALITY NOTICE**

This fax communication and any attachments may contain confidential and privileged information all of which is intended only for the use of the designated recipients. If the reader of this message is not the intended recipient, or authorized to receive for the recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of it or its contents is prohibited. If you have received this communication in error, please destroy all copies of this communication and any attachments and immediately notify us by reply fax. Thank you.

**If you have any questions, please call Robyn Redgate at Sun Capital, Inc. at  
800-880-1709 x 220 or VIA Email Robyn@SunCapitalInc.com**

**EXHIBIT "B"**

**PURE**

About Us | Collection - Cont

## Welcome to Loca Loca & PURE!

We at Loca Loca specialize in the design, production and sourcing of junior sweaters and knits. We offer european inspired trends interpreted specifically for our diverse range of catalog and retail clientel. We also develop product for contemporary, missy and plus size private label outfits.





Collection  
Pg1 Pg2

[Back to Home](#)



Please pardon our appearance  
while our website is being updated.

*Loca  
Loca*  
Apparel

**PURE**

Collection  
Pg1 Pg2

[Back to Hor](#)



Please pardon our appearance  
while our website is being updated.

EXHIBIT "C"

## Business Information Report: ES & G Trading, Inc

© 2002 Dun & Bradstreet, Inc.  
 This D&B report is being provided for your review.  
 It may not be used for any other purpose or provided to anyone else.

### - Not For Distribution -

\*IN DATE\*

|                         |                 |                     |
|-------------------------|-----------------|---------------------|
| DUNS: 78-667-6754       | DATE PRINTED    | SUMMARY             |
| ES & G TRADING, INC     | MAR 08 2007     | RATING --           |
| 1431 BROADWAY 9TH FLOOR | WHOL            | STARTED 2006        |
| NEW YORK NY 10018       | WOMEN'S/CHILD'S | SALES E \$5,000,000 |
| TEL: 212 840-8808       | CLOTHING        | EMPLOYS 6           |
|                         | SIC NO.         | HISTORY CLEAR       |
|                         | 51 37           |                     |

CHIEF EXECUTIVE: EVAN SALTON, PRES

#### \* \* \* CUSTOMER SERVICE \* \* \*

If you have questions about this report, please call our Customer Resource Center at 1-800-234-3867 from anywhere within the U.S. If you are outside the U.S., contact your local D&B office.

#### \*\*\* Additional Decision Support Available \*\*\*

Additional D&B products, monitoring services and specialized investigations are available to help you evaluate this company or its industry. Call Dun & Bradstreet's Customer Resource Center at 1-800-234-3867 from anywhere within the U.S. or visit our website at [www.dnb.com](http://www.dnb.com).

#### \* \* \* SUMMARY ANALYSIS \* \* \*

The Summary Analysis section reflects information in D&B's file as of March 7, 2007.

#### RATING SUMMARY . . . .

The absence of a Rating (--) indicates that the information available to D&B does not permit us to assign a Rating to this business. In this case, no Rating was assigned because of D&B's overall assessment of the company's financial, payment, and its historical information.

Below is an overview of the company's D&B Rating(s) since 10/17/06:

| RATING | DATE APPLIED |
|--------|--------------|
| -----  | -----        |
| --     | 10/17/06     |

#### \* \* \* PAYMENT SUMMARY \* \* \*

The Payment Summary section reflects payment information in D&B's file as of the date of this report.

D&B has not received a sufficient sample of payment experiences to establish a PAYDEX score.

Below is an overview of the company's dollar-weighted payments, segmented by its suppliers' primary industries:

|                           | TOTAL<br>RCV'D | TOTAL<br>DOLLAR<br>AMOUNTS | LARGEST<br>HIGH<br>CREDIT | %<br>W/IN<br>TERMS | DAYS SLOW |       |       |     |
|---------------------------|----------------|----------------------------|---------------------------|--------------------|-----------|-------|-------|-----|
|                           |                |                            |                           |                    | <31       | 31-60 | 61-90 | 91+ |
|                           | #              | \$                         | \$                        | %                  | %         | %     | %     | %   |
| Total in D&B's file       | 1              | 500                        | 500                       |                    |           |       |       |     |
| Payment By Industry:      |                |                            |                           |                    |           |       |       |     |
| 1 Nonclassified           | 1              | 500                        | 500                       | 100                | -         | -     | -     | -   |
| Other Payment Categories: |                |                            |                           |                    |           |       |       |     |
| Cash experiences          | 0              | 0                          | 0                         |                    |           |       |       |     |
| Payment record unknown    | 0              | 0                          | 0                         |                    |           |       |       |     |
| Unfavorable comments      | 0              | 0                          | 0                         |                    |           |       |       |     |
| Placed for collection     |                |                            |                           |                    |           |       |       |     |
| with D&B                  | 0              | 0                          |                           |                    |           |       |       |     |
| other                     | 0              | N/A                        |                           |                    |           |       |       |     |

The highest "Now Owes" on file is \$ 0

The highest "Past Due" on file is \$ 0

D&B receives over 600 million payment experiences each year. We enter these new and updated experiences into D&B Reports as this information is received.

#### PAYMENTS (Amounts may be rounded to nearest figure in prescribed ranges)

Antic - Anticipated (Payments received prior to date of invoice)  
 Disc - Discounted (Payments received within trade discount period)  
 Ppt - Prompt (Payments received within terms granted)

| REPORTED | PAYING<br>RECORD | HIGH<br>CREDIT | NOW<br>OWES | PAST<br>DUE | SELLING<br>TERMS | LAST SALE<br>WITHIN |
|----------|------------------|----------------|-------------|-------------|------------------|---------------------|
|----------|------------------|----------------|-------------|-------------|------------------|---------------------|

|       |     |     |     |     |  |      |
|-------|-----|-----|-----|-----|--|------|
| 12/06 | Ppt | 500 | -0- | -0- |  | 1 Mo |
|-------|-----|-----|-----|-----|--|------|

\* Each experience shown represents a separate account reported by a supplier. Updated trade experiences replace those previously reported.

#### FINANCE

10/16/06 On October 16, 2006 a representative verified the history and operations of the business.

#### PUBLIC FILINGS

The following data is for information purposes only and is not the official record. Certified copies can only be obtained from the official source.

\*\*\* UCC FILING(S) \*\*\*

|   |                                  |
|---|----------------------------------|
| COLLATERAL: All Assets                    | DATE FILED: 11/14/2006           |
| FILING NO: 0611148453774                  | LATEST INFO RECEIVED: 12/16/2006 |
| TYPE: Original                            | FILED WITH: SECRETARY OF         |
| SEC. PARTY: UNITED CAPITAL FUNDING CORP., | STATE/UCC DIVISION,              |
| ST. PETERSBURG, FL                        | NY                               |
| DEBTOR: ES & G TRADING INC.               |                                  |

The public record items contained in this report may have been



paid, terminated, vacated or released prior to the date this report was printed.

HISTORY  
03/07/07

EVAN SALTON, PRES  
THE OFFICER(S)

KRISTIN GOLDFARB, VICE PRES

-----  
\* \* \* CORPORATE AND BUSINESS REGISTRATIONS \* \* \*  
REPORTED BY THE SECRETARY OF STATE  
OR OTHER OFFICIAL SOURCE AS OF 02/23/2007  
-----

The following data is not an official record of the Department of State or the State of New York and Dun & Bradstreet is not an employee or agent thereof.

REGISTERED NAME: ES & G TRADING INC.

CORPORATION TYPE: PROFIT  
BUSINESS TYPE: CORPORATION  
REGISTRATION ID #: 3352257

FILING DATE: 04/24/2006  
DURATION: PERPETUAL

STATE OF ORGANIZATION (INCORPORATION): NEW YORK  
DATE OF ORGANIZATION (INCORPORATION) : 04/24/2006

STATUS: ACTIVE

WHERE FILED: SECRETARY OF STATE/CORPORATION DIVISION, ALBANY, NY

REGISTERED AGENT: SPIEGEL & UTRERA, P.A. P.C., 45 JOHN STREET, SUITE  
711, NEW YORK, NY 10038

-----  
Business registered in the State of New York.  
Business started 2006. 50% of capital stock is owned by Evan Salton. 50% of capital stock is owned by Kristin Goldfarb.  
EVAN SALTON. Antecedents are undetermined.  
KRISTIN GOLDFARB. Antecedents are undetermined.  
-----

OPERATION  
03/07/07

Wholesales women's and children's clothing, specializing in sweaters.

EMPLOYEES: 6 which includes officer(s).  
03-08 (SSM /203) 99999

001203203

FULL DISPLAY COMPLETE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X

E S & G TRADING, INC

Plaintiff,

-against-

SUN CAPITAL, INC.

MAR 26 2007

Defendant.

COUNTY CLERK'S OFFICE  
NEW YORK

---

ORDER TO SHOW CAUSE  
VERIFIED COMPLAINT

---

~~COMPLIES WITH 130-1-1a~~

Lawrence F. Morrison  
Attorney at Law  
220 EAST 72<sup>ND</sup> STREET  
NEW YORK, NY 10021  
212-861-1224

FILED  
MAR 26 2007  
COUNTY CLERK'S OFFICE  
NEW YORK COUNTY  
NYS SUPREME COURT

## SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: Diamond

Justice

PART 48

ES & G TRADING INC  
- v -  
SUN CAPITAL INC

INDEX NO. 103506/87

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

PAPERS NUMBERED

Cross-Motion: ☐ Yes ☐ No

Upon the foregoing papers, it is ordered that ~~this motion~~ the court declines to sign this order to show cause. In addition to the fact that the movant seeks the ultimate relief of a declaratory judgment, which is unavailable on a pre-answer motion, it has ~~also~~ failed to seek any injunctive relief.

FILED

MAR 26 2007

COUNTY CLERK'S OFFICE  
NEW YORK

ENTER

RECEIVED

MAR 19 2007

MOTION SUPPORT  
OFFICE

RECEIVED

MOTION SUPPORT  
OFFICEDated: 3/14/07

M.G.D. (LTS)  
MARYLIN G. DIAMOND J.S.C.

Check one: ☐ FINAL DISPOSITION☒ NON-FINAL DISPOSITION

MDAT

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

## REQUEST FOR JUDICIAL INTERVENTION

SUPREME COURT

NEW YORK COUNTY

INDEX NO. 103506/07DATE PURCHASED MARCH 14, 2007

For Clerk Only

PLAINTIFF(S) : In the Matter of the Application of

ES & G Trading, Inc. 003856

DEFENDANT(S) :

Sun Capital, Inc.

IAS entry date

3-14-07

Judge Assigned

Diamond

RJ Date

Date issue joined: \_\_\_\_\_ Bill of Particulars served (Y/N): ☐ Yes ☐ No

VAL 2

NATURE OF JUDICIAL INTERVENTION (check ONE box only AND enter information)☐ Request for preliminary conference☐ Note of issue and/ or certificate of readiness☐ Notice of motion (return date \_\_\_\_\_)☐ Relief sought \_\_\_\_\_☒ Order to show cause

(clerk enter return date \_\_\_\_\_)

☐ Other ex parte applications (specify \_\_\_\_\_)☐ Notice of petition (return date \_\_\_\_\_)

Relief sought \_\_\_\_\_

☐ Notice of medical or dental malpractice

action (specify \_\_\_\_\_)

☐ Statement of net worth \_\_\_\_\_☐ Writ of habeas corpus \_\_\_\_\_☐ Other (specify \_\_\_\_\_)

INDEX NUMBER 103506 YEAR 2007

6 RJ Fee 95.00

TOTAL 95.00

CHECK 95.00

CONS CASHIER DATE TIME TERM

-32599 2000 07 MAR 14 11:58 AM 60-3

**FILED**NATURE OF ACTION OR PROCEEDING (Check ONE box only)

MAR 26 2007

MATRIMONIAL☐ Contested

-CM

☐ Uncontested

-UM

COMMERCIAL☐ Contract

-CONT

☒ Corporate

-CORP

☐ Insurance (where insurer is a party, except arbitration)

-INS

☐ UCC (including sales, negotiable instruments)

-UCC

☐ \*Other Commercial

-OC

REAL PROPERTY☐ Tax Certiorari

-TAX

☐ Foreclosure

-FOR

☐ Condemnation

-COND

☐ Landlord/Tenant

-LT

☐ \*Other Real Property

-ORP

OTHER MATTERS☒ \* CORPORATE

-OTH

TORTS

Malpractice

COUNTY CLERK'S OFFICE

NEW YORK

☐ Medical / Professional

-MM

☐ Dental

-DM

☐ \*Other Professional

-OPM

☐ Motor Vehicle

-MV

☐ \*Products Liability

-PL

☐ Environmental

-EN

☐ Asbestos

-ASB

☐ Breast Implants

-BI

☐ \*Other Negligence

-OTN

☐ \*Other Tort (including Intentional)

-OT

SPECIAL PROCEEDINGS☐ Art.75 (Arbitration)

-ART75

☐ Art.77 (Trusts)

-ART77

☐ Art.78

-ART78

☐ Election Law

-ELEC

☐ Guardianship (MHL Art. 81)

-GUARD81

☐ \*Other Mental Hygiene

-MHYG

☐ \*Other Special Proceeding

-OSP

\*If asterisk used, please specify.

YES NO

☐ ☐ Municipality:  
(Specify \_\_\_\_\_)

YES NO

☐ ☐ Public Authority:  
(Specify \_\_\_\_\_)

YES NO

- ☒ ☐ Does this action/proceeding seek equitable relief?  
☐ ☒ Does this action/proceeding seek recovery for personal injury?  
☐ ☒ Does this action/proceeding seek recovery for property damage?

Pre-Note Time Frames:

(This applies to all cases except contested matrimonial and tax certiorari cases)

Estimated time period for case to be ready for trial (from filing of RJ1 to filing of Note of Issue):

- ☐ Expedited: 0-8 months ☐ Standard: 9-12 months ☐ Complex: 13-15 months

Contested Matrimonial Cases Only: (Check and give date)

Has summons been served? ☐ No ☐ Yes, Date \_\_\_\_\_

Was a Notice of No Necessity filed? ☐ No ☐ Yes, Date \_\_\_\_\_

ATTORNEY(S) FOR PLAINTIFF(S):

| <u>Self Rep.*</u>        | <u>Name</u>            | <u>Address</u>               | <u>Phone #</u>  |
|--------------------------|------------------------|------------------------------|-----------------|
| <input type="checkbox"/> | x LAWRENCE F. MORRISON | x 220 E. 72nd St NY NY 10002 | x (347) 276-895 |
| <input type="checkbox"/> |                        |                              |                 |

ATTORNEY(S) FOR DEFENDANT(S):

| <u>Self Rep.*</u>        | <u>Name</u>       | <u>Address</u> | <u>Phone #</u> |
|--------------------------|-------------------|----------------|----------------|
| <input type="checkbox"/> | COX O S CAM       |                |                |
| <input type="checkbox"/> | BOHRO 87110 01000 |                |                |

\*Self presented: parties representing themselves, without an attorney, should check the "Self rep." box and enter their name, address, and phone # in the space provided above for attorneys.

INSURANCE CARRIERS:

RELATED CASES: (if NONE, write "NONE" below)

| <u>Title</u> | <u>Index #</u> | <u>Court</u> | <u>Nature of Relationship</u> |
|--------------|----------------|--------------|-------------------------------|
| X            |                |              |                               |

AFFIRM UNDER PENALTY OF PERJURY THAT, TO MY KNOWLEDGE, OTHER THAN AS NOTED ABOVE, THERE ARE AND HAVE BEEN NO RELATED ACTIONS OR PROCEEDINGS, NOR HAS A REQUEST FOR JUDICIAL INTERVENTION PREVIOUSLY BEEN FILED IN THIS ACTION OR PROCEEDING.

Dated: 3/14/07

(Signature)

X Sylvia T. Byle

(Print or type name)

PETITIONER(S)

(Attorney for) Self-Represented (Pro-Se)



**COUNTY CLERK, NEW YORK COUNTY**Application for INDEX NUMBER pursuant to Section 8018,  
C.P.L.R.**FEE \$210.00**

Space below to be TYPED or PRINTED by applicant

**TITLE OF ACTION OR PROCEEDING****CHECK ONE**☐COMMERCIAL  
ACTION☐NOT  
COMMERCIAL  
ACTION☐CONSUMER  
CREDIT  
TRANSACTION☐NOT  
CONSUMER  
CREDIT  
TRANSACTION☐THIRD  
PARTY  
ACTION☐NOT  
THIRD  
PARTY  
ACTION**IF THIRD PARTY ACTION****MAIN INDEX NO.**E S & G Trading, Inc  
VS.

Sun Capital Inc.

07103506

Name and address of  
Attorney for Plaintiff  
or Petitioner.

Telephone No.

Attorney LAURENCE F. MORRISON  
270 E 72nd St.  
New York, NY 10021 212-861-1224Name and address of  
Attorney for Defendant  
or Respondent.

Telephone No.

A. Nature and object of action or  
Nature of special proceedingB. Application for Index Number filed by: Plaintiff ☒ Defendant ☐C. Was a previous Third Party Action filed Yes ☐ No ☐

Date filed

EXHIBIT "1"

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ES&G TRADING, INC.,

Plaintiff,

Case No. 07 CV

v.

SUN CAPITAL, INC.,

Defendant.  
-----X

**NOTICE OF FILING NOTICE OF REMOVAL**

Defendant, Sun Capital, Inc. (hereinafter "Sun Capital"), by and through undersigned counsel, and pursuant to 28 U.S.C. §§ 1332, 1334, 1441, 1446 and 1452, hereby gives notice that on \_\_\_\_\_, 2007, it filed its Notice of Removal in the United States District Court for the Southern District of New York. A copy of the Notice is attached hereto as Exhibit "1." In accordance with Title 28 of the United States Code, no further proceedings should be held in the Supreme Court of the State of New York in and for the County of New York.

Dated: New York, New York  
April 26, 2007

STRASSBERG & STRASSBERG, P.C.  
Attorneys for Defendant

By: \_\_\_\_\_  
Robert Strassberg (RS-9628)  
57 West 38<sup>th</sup> Street 8<sup>th</sup> Floor  
New York, New York 10018  
(212) 736-9500

TO: LAWRENCE F. MORRISON, ESQ.  
Attorney for Plaintiff  
220 East 72<sup>nd</sup> Street  
New York, New York 10021  
(212) 861-1224